

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6573 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

RAMCHANDRA M MAHARAJ

Versus

EXECUTIVE ENGINEER (O&M)

Appearance:

MR KB PUJARA for Petitioner
MR RM VIN for Respondent No. 1
NOTICE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE M.S.SHAH
Date of decision: 16/08/1999

ORAL JUDGEMENT

This petition was earlier disposed of by this Court's judgment dated 26.2.1998 wherein this Court gave the following directions :-

"7. From the judgment of this Court dated

15th March, 1984, it is clear that the candidates at Sr. No. 1, 2 and 4 were the petitioners before this Court. The candidate at Sr.No. 1 is SC candidates and at Nos. 2 and 4 are General Category Candidates. The petitioner is also a candidate of General Category. It is not in dispute that after decision of this Court, five appointments from the said select list have been made, i.e. of the candidates at Sr.No. 1, 2, 3, 4 and 6. The candidates at Sr.No. 2 and 4 are General Category candidates whereas the candidates at Sr.No. 1 and 6 in the select list are SC candidates and No. 3 is a candidate belonging to Backward Class. So out of five appointments, two appointments have been made of SC candidates and one of BC candidate. Three other posts were available and in all appointments have to be made against eight posts, but the learned counsel for the respondent-Board has failed to point out that in the presence of these number of candidates of SC, ST and BC, how all the three posts would have been reserved for SC & ST in the ratio of 2:1. The respondent-Board has given absolute vague and indefinite reply. The respondent-Board should have been straightforward and should have given out clearly, the Roster points, which it has not done. Which of the Roster points have to be followed has to be specifically stated by the Board, but that precisely has not been done and it has tried to give out incomplete picture of facts. Out of five appointees, two were of SC category and it is difficult to accept that two other vacancies would have also been reserved for SC candidates.

8. In view of the these facts, this writ petition is allowed and the respondent-Board is directed to consider the case of the petitioner for appointment to the post of Peon with reference to his position in the select list at Sr.No. 5. In case still the petitioner's claim is not acceptable as per the Roster points, a reasoned order may be passed and a copy of the same may be sent to the petitioner by registered post A.D. Where the Board considers to give appointment to the petitioner, the petitioner shall not be entitled for any backwages, but he shall be entitled for continuity of service, seniority, notional benefits of pay etc."

Liberty was reserved to the petitioner for revival of this Special Civil Application in case of difficulty.

2. By order dated 20.5.1998, the Executive Engineer (O&M), Vijapur negated the petitioner's claim and held that the petitioner was not entitled to be appointed as per the roster.

3. Pursuant to the aforesaid liberty, the petitioner filed Misc. Civil Application No. 1573 of 1998 for revival of the petition which was granted by this Court and accordingly the original petition has been placed for further hearing before this Court. In the memo of the Misc. Civil Application, the petitioner has raised the contentions for challenging the aforesaid order dated 20.5.1998 of the Executive Engineer, on whose behalf additional affidavit dated 7.8.1999 has been filed to support the impugned order dated 20.5.1998. With the consent of the learned counsel for the parties, the petition has been finally heard on the basis of the record of the present petition as well as the Misc. Civil Application.

4. Mr Pujara, learned counsel for the petitioner has submitted that as per this Court's judgment dated 26.2.1998, the respondents were merely required to operate the roster vis-a-vis the candidates who were placed in the select list pursuant to the interviews held on 12.5.1982 which list is at Annexure "A" to the petition. However, in the roster worked out by the respondents as mentioned in the impugned order one K.S. Baria's name is added. Said Baria belongs to a Scheduled Tribe and his name has been placed against roster point No. 11 which was meant for the general category.

In reply to the said contention, Mr Vin for the respondents submits that K.S. Baria, though a ST candidate, has been shown against the general vacancy in roster point No. 11 because earlier one M.A. Mister, a general category candidate was appointed against the roster point meant for a ST candidate at Sr.No. 1 and another general candidate V.B. Solanki was appointed against roster point No. 8 which was meant for an ST candidate. Hence, the Board has adopted the aforesaid course of action.

In rejoinder, Mr Pujara points out that as per the Establishment Circular No. 171 dated 6.4.1970 (page 34 of the paper book) if the candidates were not

available against the reserved posts, those reserved posts should be treated as unreserved and, therefore, there was no question of any carry forward of the roster points.

5. Having heard the learned counsel for the parties, it appears to the Court that there is considerable substance in the submissions made by Mr Pujara. The relevant part of Establishment Circular No. 171 reads as under :-

"The Board also decided that if, at the time of recruitment, sufficient number of candidates are not available according to the prescribed percentage of reservation for either members of scheduled castes and scheduled tribes, the reserved posts should be treated as unreserved."

A bare perusal of the aforesaid clause clearly indicates that if an ST candidate is not available, while making recruitment against a particular roster point reserved for ST, the post would be treated as unreserved. The said circular does not contain any provision for carry forward. Consequently, when this Court directed the respondents to work out the roster, the same was required to be confined to the candidates whose names were included in the select list at Annexure "A" to the petition and the name of other persons could not have been taken into consideration on the ground that in the past two roster points for ST were filled in by general category candidates.

6. In view of the affidavit filed by the petitioner on 23.2.1998 and the judgment dated 26.2.1998, the petitioner is not being awarded any backwages for the period from 1986 till 31.3.1998.

7. In the result, the petition succeeds. The respondents are directed to appoint the petitioner on the post of Peon with effect from 1.4.1998 within one month from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier.

If respondent No. 1 had correctly implemented the order dated 23.2.1998 of this Court, the petitioner would have got the appointment by 31.3.1998. The respondents were expected to take a decision within a reasonable time and to carry out the directions given by this Court in letter and spirit. The respondents shall

pay the petitioner backwages for the period from 1.4.1998 till the date of appointment within three months from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier.

8. Rule is made absolute to the aforesaid extent with costs.

August 16, 1999 (M.S. Shah, J.)

sundar/-